Kansas
Department of Aging and Disability Services

HCBS Transition Plan and Proposed HCBS Program Changes
Request for Public Comments

Public Comment Period: **Posted:** January 26, 2015 **Ended:** February 25, 2015

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The HCBS Transition Plan and proposed changes is open to public comment and feedback from 1/26/15 through 2/25/15. The final proposal is summarized in this document and will be posted to the KDADS website at www.kdads.ks.gov.

The final summary of the proposed changes in the HCBS renewals effects the following programs:

- Autism
- Technology Assisted (TA)
- Severe Emotional Disturbance (SED)

The following opportunities are provided for submission of comments and feedbacks:

- **In Person:** February 4th and 5th, 2015, from 10-12 and 2-4 in Wichita and Topeka
- **Conferencing option:** *On the following dates call:* 1-866-620-7326, code 4283583031
  February 10, 2015, Dial: 1-866-620-7326, Enter: PIN 5826736791#
  11:00-12:00 noon and (repeat session) 5:30-6:30pm
- **By Email:** **For Autism and TA**:
  HCBS-KS@kdads.ks.gov – **Subject:** HCBS Renewals Public Comments

  For SED:
  Ryan.Gonzales@kdads.ks.gov – **Subject**: SED Waiver
- **By Mail:** **For Autism and TA**:
  KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603

  For SED:
  KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603
- **By Fax:** **For Autism, SED and TA**:
  785-296-0256, Attn: HCBS Programs

After the public information sessions, an online survey was made available for individuals, providers, and stakeholders to submit comments and questions to KDADS. A summary of KDADS responses will be posted on the KDADS website. The summary of responses and any changes to the proposals will be submitted to CMS as part of the amendment submission.

The following proposed changes are open for public comment. Language specific to these proposed changes will be presented in person, via conference call and posted on the KDADS website at www.kdads.ks.gov. The public will be offered various opportunities to submit suggestions for changes, questions, comments and concerns at public events, online, in-person or via email to HCBS-KS@kdads.ks.gov for Autism and TA programs, or Ryan.Gonzales@kdads.ks.gov for the SED program.

Autism Program Specific Changes

1. Proposed Change: KDADS has developed a transition plan for the HCBS/Autism settings that will assess and ensure Kansas provider owned/controlled settings meet the requirements of the HCBS Final Settings Rule within 5 years.

2. Proposed Change: KDADS had updated the language in the waiver to be consistent with current state agency names and responsibilities, as well as streamlining the language for program members.

a. References to SRS have been changed to DCF

b. References to "individuals," "beneficiaries or "children" have been changed to "participants."

3. Proposed Change:KDADS will ensure that firewalls to mitigate conflict of interest regarding service plan development and service delivery will be put in place to be consistent with the current CMS requirement regarding Conflict Free Case Management.

4. Proposed Change: KDADS is proposing a reserve capacity for Military Families and children who enter into facilities for temporary stays.

a. Military families entering into the waiver

a. This will allow military families who were receiving services through a Tricare or like program, in the event the program develops a waitlist, may bypass the waitlist.

b. Participants who enter into temporary stays in a facility or hospital for 90 days or less.

a. This will ensure that the child who enters into a temporary stay due to an emergency or an unforeseen situation will not lose their place on the waiver during their stay.

5. Proposed Change: KDADS has made general grammatical changes or corrections throughout the waiver from Appendix A to Appendix J, as needed.

6. Proposed Change: KDADS has proposed the requirement of a family to utilize Family Adjustment Counseling, Parent Support and Training (Peer to Peer), or both as a requirement for a one-time, one-year extension request on the Autism Waiver.

a. Currently the Autism Waiver is a three (3) year early intensive therapy program. The program allows families to request a one-time extension for a fourth (4th) year on the Waiver as long as the Autism Specialist and MCO demonstrate that an additional year on the program would be beneficial for the child. KDADS has recognized that a large part of the therapy component for the child is preparation of the family for life outside of waiver services.

b. Since the waiver is a short-term program, part of the success within and outside of the waiver for continuing therapy is ensuring that the family has the tools needed to continue to work with the child once the program is complete or the child no longer meets functional eligibility. The success of the child lies not

only in their individual success with their progress, but also with the family's progress in coping and preparation to work with the child in the future.

c. To address this KDADS proposes a family must utilize one or both of the aforementioned services based on the assessed need of the MCO. KDADS recommends that these services are utilized prior to an extension request to prepare the child and family for life outside of the waiver in hopes that the child will make strides that will not require a transition to the I/DD program. Thus, the family will have the tools necessary to transition back and take control without therapy services.

7. Proposed Change: KDADS is clarifying the review team for 4th year extensions on the Autism Waiver. Currently the waiver references the "review team" but it does not detail who those individuals are. The proposed change for the review team and their requirements will be:

a. Autism Specialist identifies the need for a 4th year and submits all required documents with a written recommendation to the participant's MCO.

b. The MCO will review the required documents that have been sent from the Autism Specialist and then forward all materials on the waiver program manager with the MCO written recommendation.

c. When all required documentation (including a 1 written recommendation from the Autism Specialist and 1 written recommendation from the MCO) reaches the Autism Program Manager, the packet will be reviewed and the program manager will notify the family via an NOA of the decision for the extension.

Request for Public Feedback: (Proposed Changes for Future Renewal in 2016)

Proposed Change: KDADS is proposing adding a component of program oversight will allow the following: Autism Specialist monitoring of IIS service delivery; delivery of Family Adjustment Counseling and Parent Support and Training as identified in the IBP/POC via distance technology. The HCBS/Autism program currently has a provider capacity issue. This will allow an exception for participants who live in areas that the MCO can demonstrate a need for services, but cannot identify a face to face provider base for an Autism Specialist.

a. This is STRICTLY an exception to the face-to-face delivery model subject Autism Program Manager's approval for those individuals in extreme rural areas or areas that have no providers.

b. This will not replace face-to-face service delivery.

Technology Assisted (TA) Program Specific Changes

1. Proposed HCBS Setting TA Transition Plan that will assess and ensure Kansas provider settings meet the requirements of the HCBS Final Setting Rule within 5 years.
2. Modified expectation of MCO's role in service plan development in appendix D
3. Modified plan of care development process, including required assessment instrument (MATLOC) utilized for determining the level of service needs based on assessed acuity.
4. Clarified service definition/ limitations for person care services and specialized medical care services.
    a. Personal Care Service
        i. PSA will be changed to the standardized definition of personal care service (PCS). Kansas will continue to offer both agency and consumer directed option.
        ii. Clarified PCS is not a default level of care for technology dependent and medically fragile children served on this program. This service should only be accessed when the participant is medically stable and the level of care needs can be fully met by the PCS; or PCS is elected at the option of the participant or participant's minor parent/legal guardian/ legally responsible person. An exception is allowable when the participant's only alternative is PCS service, the care coordinator is responsible for assessing the level of need to determine if the participant's medical needs can be fully met under PCS services. The care coordinator must take into consideration the assurance of the participant's health and welfare needs prior to authorizing PCS service.
    b. Specialized Medical Care Service
        i. Clarify service needs will be determined based on the MATLOC acuity/ risk assessment tool
        ii. Services cannot be provided to more than two (2) TA participants related or unrelated living in the same home.
        iii. If more than one TA recipient reside in the same home and the level of care needs cannot be met by a personal care attendant, the MCO must meet the level of need with appropriate staffing.
5. Military Exception: KDADS has included language that if there is a waiting list, military individuals and their immediate dependent family members who have been determined program eligible may bypass waitlist upon approval by KDADS.
6. Adding the list of prohibited offenses for the purpose of direct service worker background check clearance, which states "Any provider or provider assistant found identified to have been substantiated for prohibited offenses as listed in KSA 39-970 & 65-5117 is not eligible for reimbursement of services under Medicaid funding."
7. General language changes from individual, consumer, or beneficiary to participant to be consistent with CMS language for program recipient.
8. The FMS service definition will be modified to reflect the Kansas hybrid model, which will be referred to as the Fiscal/ Employer Agent (F/EA). This model will shift from the current model of consumer and FMS provider as co-employers to the consumer being the sole employer of the worker and has full authority of managing the worker, including determining worker's wage within

specified wage range. The FMS provider's key responsibilities are to provide administrative functions such as employer support for the consumer and information and assistance services.

9. Proposed clarification language to participant-direction opportunities under the TA program:
    a. In this program, participant direction is offered under Person Care Service (PCS). The participant is offered an opportunity during the initial and Plan of Care reevaluation process to choose participant-direct (PCS) service. Following the assessment, if the participant is determined to be medically stable and determined appropriate to meet the medical needs of the participant safely, the participant, or legal representative has the option to choose whether or not to participant-direct his/her (PCS) service. If participant-direction is chosen, the MCO will assist the participant or legal representative by reviewing the responsibilities of participant-direction and in addition to the following;
        i. Assist the participant or legal representative in selecting a FMS provider serving in his/her area by providing a list of Medicaid enrolled FMS provider.
        ii. Review with the waiver participant the liabilities and his/her rights and responsibilities when he/she chooses to participant-direct.
        iii. Assist participant/legal representative in connecting with FMS agency of choice.
        iv. Waiver participants who chose to direct his/her (PCS) service under the waiver are permitted to choose any qualified providers to deliver the service, subject to meeting the qualifications established by KDADS.
        v. The participant/legal representative is responsible for the following:
            1. Complete an agreement with an enrolled Financial Management Services (FMS)provider;•
            2. Complete a work agreement with the direct service provider;
            3. Review the Self-direction tool-kit"
            4. Recruit and select the direct service worker and direct the individual to the FMS agent for enrollment and completion of employment documents;
            5. Referral of direct service worker to the participant's chosen FMS provider;
            6. Determine worker's wage within specified Medicaid wage range minus applicable payroll deductions;
            7. Provide appropriate training and authorization of delegated tasks as identified in the PSA Skill Checklist in order to appropriately meet the medical needs of the participant;
            8. Assign work hours to the direct service worker(s) within the authorized limits specified in the plans of care;
            9. Verification of hours worked and assurance that time worked is forwarded to the FMS provider;
            10. Other monitoring of the direct service worker's work and dismissal of direct service worker, if necessary;
            11. Arrange for a backup plan in the event an direct service worker does not report for work in order to maintain continuity of care, including assignment of replacement workers during vacation, sick leave, or other absences of the assigned direct service worker.

All (PCS) services will be arranged for, purchased under the participant's written authority, and paid for through the FMS agent. The FMS provider is responsible to providing employer support, specifically two distinct types of tasks: (1) administrative Tasks and (2) Information and Assistance (I & A) Tasks.

Alternatively, if participant-direction is not chosen, the MCO will provide the participant or legal representative a list of agency-directed services available to meet the participant's needs. The MCO will be responsible for coordination of needed services identified as an assessed need for the participant. The MCO will facilitate and coordinate services with waiver service providers within the developed plan of care.

b. Participants on this waiver or parent/legal guardian on the participant's behalf may direct some or all of the services offered under participant-direction. Participant-direction option is available for (PCS) only. Participant-direction is not offered for the following services:

    i. Health Maintenance Monitoring
    ii. Home Modification
    iii. Intermittent Intensive Medical Care
    iv. Medical Respite Care
    v. Specialized Medical Care Services
    vi. Medical Service Technician

Participant-direction is not an option when the participant/parent/legal guardian has been determined to have been documented as demonstrating the inability to participant-direct the direct service workers, resulting in a fraudulent activities; confirmation of abuse, exploitation or medical neglect. Any decision to restrict or remove a participant's direction opportunity will be referred by the MCO to KDADS for concurrence of action and is subject to the grievance and appeal protections

c. Participants are informed that, when choosing participant direction, they must exercise responsibility for making choices about (PCS) service, understand the impact of the choices made, and assume responsibility for the results of any decisions and choices they make. Participants are provided with, at a minimum, the following information about the option to direct their services:
    i. limitation to PCS;
    ii. need to select and enter into an agreement with an enrolled Financial Management Services (FMS) provider;
    iii. related participant responsibilities;
    iv. potential liabilities related to the non-fulfillment of responsibilities in self-direction;
    v. supports provided by the managed care organization (MCO) they have selected;
    vi. the requirements of a PCS;
    vii. the ability of the participant to choose not to participant direct services at any time; and
    viii. other situations when the MCO may discontinue the participant's option to direct their services and recommend agency-directed services.

The MCO is responsible for sharing information with the participant about participant-direction of services by the participant. The FMS provider is responsible for sharing more detailed information about participant-direction once the participant has chosen this option and identified an enrolled provider. This information is also available from the TA Program Manager, KDADS Regional QMS, and is also available through the online version of the HCBS-TA Waiver Policies and Procedures Manual.

Information regarding participant-directed services is initially provided by the MCO during the plan of care/service plan development process, at which time the Participant Choice form is completed and signed by the participant, and the choice is documented on the participant's Plan of Care. This information is reviewed at least annually with the member. The option to end participant direction can be discussed, and the decision to choose agency-directed services can be made at any time.

d. (PCS) services may be directed by an individual acting on behalf of the participant as well as directed by a durable power of attorney for health care decisions, a guardian, or a conservator. A participant who has been adjudicated as needing a guardian and/or conservator cannot choose to participant-direct his/her care. The participant's guardian and/or conservator may choose to participant-direct the participant's care. An adult participant's legal guardian and/or conservator cannot, however, act as the participant's paid attendant for (PCS) service. Guardians and/or conservators are not allowed to benefit financially from their interactions with the ward and/or conservatee they represent (K.A.R. 30-5-302).

   Each participant has an individual plan of care that is developed with input from the person, an identified responsible party, and person's who know and care about the participant.

   In the event that a non-legal representative has been chosen by an adult participant, the support team, along with the participant will identify the roles and responsibilities of the non-legal representative and these roles and responsibilities will be documented in the individualized plan of care.

   At any time the individualized plan of care is being reviewed and updated, the performance of the non-legal representative will be reviewed to assure that the person is functioning in the best interest of the participant and a determination will be made as to any needed changes or modifications to the role of the non-legal representative.

It is the role of the MCO to assure services are provided in a manner consistent with the plans of care.

e. The participant has the opportunity as well as the ability to exercise responsibility in discontinuing to participant-direct if they choose to do so. If the participant chooses to discontinue to participant-direct, he/she is responsible for:

i. Notify all providers as well as the FMS agency. He/she is to maintain continuous at care coverage until an agency-directed service can be put in place;
ii. Give ten (10) days' notice of his/her decision to the MCO Care Manager in order to allow for the coordination of services through an agency.
iii. The duties of the MCO Care Manager are to:
iv. Explore other service options and complete a new choice form indicating the choice to agency-direct with the participant;
v. Advocate for the participant by locating and coordinating services with provider agencies in order to meet the participant's assessed needs.

f. The MCO may, if appropriate discontinue the participants choice to direct their services when, in the MCOs professional judgment through observation and documentation, it is not in the best interest of the participant to participant-direct their services. The MCO will make the recommendation to KDADS and there must concurrence on the reason to remove participant-direction and the following conditions will be compromised if the participant-direction continues:
    i. The health and welfare needs of the participant are not being met based on documented observations of the MCO and KDADS Quality Assurance staff, or confirmation by APS, and all training methods have been exhausted;
    ii. The PCS is not providing the services as outlined on the PCS Skilled worksheet, and the situation cannot be remedied;
    iii. The participant is at risk for fraud, abuse, neglect and exploitation
    iv. The participant is falsifying records resulting in claims for services not rendered.

When an involuntary termination occurs, the MCO will apply safeguards to assure the participant's health and welfare remains intact and ensures continuity of care by offering the participant or family a choice of provider-managed services as an alternative. If the participant chooses the alternative provider managed services, the MCO will assess the participant's needs and coordinate services according to the individual's health and safety needs.

10. **Proposed amended language for children in state custody served on the TA program for (PCS) service and is subject to CMS approval:** Children in foster care will only receive agency-directed care while in custody of the State. Foster parents and agencies of children (with disabilities not just IDD) in the state's custody will continue to have the opportunity to choose the providers of services for agency-directed services. The transition plan and timeframe will coincide with the transition plan for the federal EIN.
11. Modified language regarding voluntary termination and language relating to incidences leading to involuntary termination of an individual's choice to participant direct. "Participants" refers to the participant or representative directing the care on behalf of the participant.
    a. See proposed changes to participant-direction language above in # 9
12. Kansas is requesting to reserve capacity to maintain waiver eligibility for individuals admitted into an institution on a temporary basis up to 90 days. For the purpose of this program, participants who are hospitalized will continue to maintain TA program eligibility up to 90 days, at the end of this

period, the participant's eligibility will end. The participant will need to reapply for HCBS services when a pending discharge date has been determined.

13. Consistent with all HCBS programs managed by Kansas, TA waiver program will adopt the proposed language for the purpose of mitigating conflict of between guardian and consumer (inserted in Service Definition of Personal Care Services Appendix C).
    a. Proposed Language Applicable to All HCBS Services For the Purpose of Mitigating Other Conflicts of Interests (inserted in Service Definition of Personal Care Services Appendix C).
        i. Consistent with 42 CFR 442.301, the State will ensure policies, processes and protocols are in place to support the person-centered planning process and to mitigate potential conflicts of interest. CMS reviewed and approved the KanCare service planning process during the transition to managed long-term services and supports, so KDADS understands that process to be compliant with the regulations on person-centered planning and potential conflicts. KDADS has requested technical assistance from CMS to ensure that all other elements of the HCBS programs are compliant with CMS conflict of interest regulations.
        ii. A court appointed legal guardian is not permitted to be a paid provider for the participant unless a court determines that all potential conflict of interest concerns have been mitigated in accordance with KSA 59-3068. It is the responsibility of the appointed or proposed guardian to report any potential conflicts to the court and to maintain documentation regarding the determination of the court.
        iii. A copy of the special or annual report in which the conflict of interest is disclosed will be provided to the State or designee.
        iv. If the court determines that all potential conflict of interest concerns have not been mitigated, the legal guardian can:
        v. Select another family member or friend to provide the HCBS services to the participant. If a family member or friend is not available, the participant's selected MCO or FMS provider can assist the legal guardian in seeking alternative HCBS service providers in the community; OR
        vi. Select another family member or friend (who is not a legal guardian or DPOA) as a representative to develop or direct the plans of care. In that case, the MCO will obtain the participant's written consent of delegated representative to act on behalf of participant, initially and annually thereafter; OR
        vii. Select other legal guardian or activated DPOA to serve as the appointed representative to act on behalf of the participant.
        viii. An exception to the criteria may grant by the State when a participant/ guardian live in a rural setting and the nearest agency-directed service provider available to provide services is in excess of 50 miles from the participant residence.
14. Proposed elimination of Health Maintenance Monitoring as this service can be provided by MCO care coordinators. This service will not be removed from the draft waiver document until after the 30 day comment period.

Request for Public Feedback: (Proposed Changes for Future Amendments)

KDADS is proposing addition of Specialized Day Service for TA waiver eligible children under the age of 5, whose parents is seeking employment outside the home. The purpose of this proposal is to support an individual's integration into the community, increase socialization and promote deinstutionalization of an individual's quality of life. Criteria for consideration:

a. Children less than 5 years of age
    i. Medically stable and has not had an acute hospitalization within the last 6 months or greater
    ii. Parent is seeking employment outside the home
b. Qualified Provider
    i. Licensed home daycare or facility
    ii. Must not be education in nature

Proposed Severe Emotional Disturbance (SED) Program Specific Changes:

1. KDADS is proposing adding language to the Plan of Care signature page that states that when a consumer and their parents or guardians signs the Plan of Care they acknowledge that their preferences were reflected in the Plan of Care.

2. KDADS is proposing adding language to the Plan of Care to identify the consumer's desired outcomes.

3. KDADS is proposing adding language to the Plan of Care to identify less intrusive methods of meeting the consumer's need that have been tried, but did not work.

4. KDADS is proposing adding a requirement that KDADS will determine if a consumer is clinically eligible for the SED waiver. The current process is that the Community Mental Health Center (CMHC) completes the functional assessment and determines if a consumer is clinically eligible for the SED waiver. In the proposed process the CMHC will complete the functional assessment and send the information to KDADS for the clinical determination. Once a consumer is found to be clinically eligible for the waiver the Department of Children and Family will assess if that consumer if financially eligible to be on the waiver. Once a consumer is found to be both clinically and financially eligible for the waiver the CMHC will develop the Plan of Care and submit it to the Managed Care Organization (MCO) for review and approval. After the Plan of Care is approved by the MCO the CMHC will provide the waiver services to the consumer.

5. KDADS is proposing adding language that if there is a waiting list, military individuals and their immediate dependent family members who have been determined program eligible may bypass waitlist upon approval by KDADS.